UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 19

MCKENZIE-WILLAMETTE REGIONAL MEDICAL CENTER ASSOCIATES, LLC d/b/a MCKENZIE-WILLAMETTE MEDICAL CENTER

Case Nos.

19-CA-077096 19-CA-095797

and

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SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 49, CTW-CLC

RESPONDENT'S EXCEPTIONS TO THE DECISION ISSUED BY ADMINISTRATIVE LAW JUDGE GERALD ETCHINGHAM

As the Respondent in the above-captioned cases, McKenzie-Willamette Regional Medical Center Associates, LLC d/b/a McKenzie-Willamette Medical Center (hereafter, "McKenzie-Willamette" or the "Hospital") hereby files, by and through the Hospital's Undersigned Counsel, these Exceptions to the Decision (hereafter, the "Decision") issued by Administrative Law Judge Gerald Etchingham (hereafter, the "Judge") on June 3, 2013.

STATEMENT OF THE CASE

Exception No. 1: The Hospital excepts to the Judge's rejection of the Hospital's position that the Board cannot decide the above-captioned cases because the agency lacks a quorum. See Decision, page 1, fn. 2.

Grounds: The Judge did not fully account for the Hospital's position, insofar as the Hospital also asserts that, due to the lack of a quorum, the Acting General Counsel was prohibited from issuing and prosecuting the Consolidated Complaint. Furthermore, in any event, the Judge's rulings are contrary to controlling law.

Exception No. 2: The Hospital except to the Judge's finding that the Hospital did not have a "satisfactory explanation" as to why the Hospital did not produce the documents sought by the Subpoena *Duces Tecum* that the Acting General Counsel served upon the Hospital. <u>See</u> Decision, page 2, Lines 8-10.

Grounds: The Judge's finding is not supported by the record.

Exception No. 3: The Hospital excepts to the Judge's imposition of Bannon Mills sanctions. See Decision, page 2, fn. 3.

Grounds: The Judge's ruling is not supported by the record or by the Board's precedent.

Exception No. 4: The Hospital excepts to the Judge's denial of the motion filed by the Hospital and the Charging Party in which they jointly requested that the unfair labor practices be withdrawn and the Consolidated Complaint dismissed. See Decision, page 2, fn. 5.

Grounds: The Judge's ruling is not supported by the record or by the Board's precedent.

FINDINGS OF FACT

B. Background Facts

Exception No. 5: The Hospital excepts to the Judge's finding that the parties' current Collective Bargaining Agreement specifies that "health insurance will be provided to employees by Respondent using the CHS health benefit plan, its own self-insured plan." See Decision, page 3, Lines 14-15.

Grounds: The Judge's finding is not supported by the record.

C. Unfair Labor Practices

Exception No. 6: The Hospital excepts to the Judge's statement, made in the context of describing the Acting General Counsel's allegations, that the Union's request for information related to the employees' health insurance was made "after the Respondent informed the Union of its intent to make changes to the plan prior to the expiration of the current CBA." See Decision, page 4, Lines 14-16.

Grounds: The Judge's statement is not an accurate characterization of the General Counsel's allegations, or alternatively, is not supported by the record.

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1. The Union's February 23 and May 14, 2012 Requests for Information

Exception No. 7: The Hospital excepts to the Judge's finding that the grievance filed by the Charging Party on behalf of Ms. Melissa Frost alleged "abuse discrimination and retaliation directed toward Frost by Hoppe and O'Leary." See Decision, page 4, Lines 30-34.

Grounds: The Judge's finding is not supported by the record.

Exception No. 8: The Hospital excepts to the Judge's failure to cite to the portion(s) of the record that support his findings and conclusions. See Decision, page 4, fn. 7.

Grounds: The Judge's failure to specify the portion(s) of the record supporting his findings and conclusion is contrary to controlling law.

Exception No. 9: The Hospital excepts to the Judge's finding that the Hospital did not object to the Union's information requests related to Ms. Frost. See Decision, page 5, Lines 13-15.

Grounds: The Judge's finding is not supported by the record.

2. The Union's November 21, 2012 Request for Information Exception No. 10: The Hospital excepts to the Judge's finding that the Union made "repeated requests" for information related to the represented employees' health insurance. See Decision, page 5, Lines 24-26.

Grounds: The Judge's finding is not supported by the record.

Exception No. 11: The Hospital except to Judge characterizing as "significant" Ms. Crider's explanation for why the Union needed the information related to the represented employees' health benefits. See Decision, page 6, Line 32.

Grounds: The Judge's characterization is not supported by the record and is part of the Judge's flawed legal analysis of the allegation.

Exception No. 12: The Hospital excepts to the Judge's findings as they relate to the telephone conversation between Ms. Crider and Ms. O'Leary on December 17, 2012. See Decision, page 6, Line 47 to page 7, Line 11.

Grounds: The Judge's findings are not supported by the record.

Exception No. 13: The Hospital excepts to the Judge's findings as they related to the parties' communications subsequent to Ms. Crider and Ms. O'Leary's telephone conversation on December 17, 2012. See Decision, page 7, Lines 13-37.

Grounds: The Judge's findings are not supported by the record.

Exception No. 14: The Hospital excepts to the Judge's finding that the Hospital did not object to the Union's request for information related to the represented employees' health benefits. See Decision, page 7, Lines 39-41.

Grounds: The Judge's finding is not supported by the record.

Analysis

A. The Respondent's Untimely Responses to the Union's February and May Information Requests

Exception No. 15: The Hospital excepts to the Judge's conclusion that the information requested by the Union on Ms. Frost's behalf was, entirely, presumptively relevant. See Decision, page 8, Lines 30-33.

Grounds: The Judge's conclusion is not supported by the Board's precedent or case law.

Exception No. 16: The Hospital excepts to the Judge's conclusion that, by virtue of the Hospital's production of the requested information, the Hospital had waived all objections, together with the sanctions imposed by the Judge.

See Decision, page 8, Lines 35-40.

Grounds: The Judge's conclusion and rulings are not supported by the record, nor are they supported by the Board's precedent or case law.

Exception No. 17: The Hospital excepts to the Judge's analysis of whether the Hospital's delay in providing the information related to Ms. Frost violated the Act, together with the Judge's finding that the delay violated the Act. See Decision, page 9, Lines 11-37.

Grounds: The Judge's analysis is flawed and his conclusion is not supported by the record nor the Board's precedent or case law.

B. The Information Sought in the Union's November 21, 2012 Request for Information Is Relevant and Must Be Produced

Exception No. 18: The Hospital excepts to the Judge's conclusion that the information related to the represented employees' health benefit is presumptively relevant. See Decision, Lines 10-41.

Grounds: The Judge's conclusion is not supported by the Board's precedent or case law.

Exception No. 19: The Hospital excepts to the Judge's determination that the Hospital did not establish any legal basis for not producing the requested information, together with the sanctions imposed by the Judge. See Decision, page 10, Line 43 to page 11, Line 5.

Exception No. 20: The Hospital excepts to the Judge's analysis of Ms. Crider's testimony and his findings as to the Union's need for the requested information. See Decision, page 11, Lines 6-25.

Grounds: The Judge's analysis is flawed and his findings are neither supported by the record nor the Board's precedent or case law.

Exception No. 21: The Hospital excepts as to the Judge's findings related to the pre-hearing settlement reached by the parties, together with his related analysis. See Decision, page 11, fn. 9.

Grounds: The Judge's findings and analysis are not supported by the record not supported by the Board's precedent or case law.

Exception No. 22: The Hospital excepts to the Judge's finding that the Hospital's refusal to produce the information related to the represented employees' health benefits violated the Act. See Decision, page 11, Line 26. Grounds: The Judge's finding is not supported by the record.

CONCLUSIONS OF LAW

Exception No. 23: The Hospital excepts to the Judge's conclusions of law.See Decision, page 11, Line 30 to page 12, Line 7.

Grounds: The Judge's conclusions are not supported by the record, arise from flawed legal analysis and are not supported by the Board's precedent or case law.

REMEDY

Exception No. 24: The Hospital excepts to the Judge's Remedy. See Decision, page 12, Lines 10-16.

Grounds: The Judge's remedies are not supported by the record, arise from flawed legal analysis and are not supported by the Board's precedent or case law.

ORDER

Exception No. 25: The Hospital excepts to the Judge's recommended Order.

See Decision, page 12, Line 22 to page 12, Line 11.

Grounds: The Judge's recommended Order is not supported by the record, arises from flawed legal analysis and is not supported by the Board's precedent or case law.

APPENDIX

Exception No. 26: The Hospital excepts to the Appendix attached to the Judge's Decision.

Grounds: The Appendix is not supported by the record, arises from a flawed legal analysis and is not supported by the Board's precedent or case law.

Dated: July 8, 2013 Glastonbury, Connecticut

Respectfully submitted,

/s/______

Bryan T. Carmody, Esq.
Attorney for Respondent

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CERTIFICATE OF SERVICE

The Undersigned, Bryan T. Carmody, Esq., being an Attorney duly admitted to the practice of law, does hereby certify, pursuant to 28 U.S.C. § 1746, that, on July 8, 2013, a copy of the Respondent's Exceptions were served upon the following by email:

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Dated:	Glastonbury, Connecticut
	July 8, 2013

Respectfully	submitted,
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